



January 4, 2000

Mr. Jay Garrett
City Attorney
City of Greenville
P.O. Box 1049
Greenville, Texas 75403-1049

OR2000-0012

Dear Mr. Garrett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130896.

The Greenville Police Department (the "department") received a request for all records concerning seven specified individuals. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted documents. You have submitted records concerning four of the seven individuals. We assume that you have released the remainder of the requested information to the requestor.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor asks for all the police records of certain named individuals. In this case, we believe that these individuals' right to privacy has been implicated. Thus, to the extent that the department has records in which the named individuals are possible suspects, we conclude that the department must withhold this information under section 552.101 of the Government Code. *See id.*; *see also* Gov't Code § 411.106(b). We have marked the information that you must withhold under section 552.101.

We will address your other claimed exceptions for those records not covered by *Reporters Comm. for Freedom of the Press*. To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 at 1 (1991). Because the department is not and would not be a party to any criminal litigation, section 552.103 is inapplicable in this instance.

Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why section 552.108 is applicable. *See* Gov't Code §§ 552.108, .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that some of the requested information relates to pending cases in which charges have been filed and prosecutions are pending. However, you have not specified which of the many cases you submitted are pending. In addition, you contend that portions of the offense reports, such as witness statements and information revealing the properties confiscated and investigative techniques, are excepted under section 552.108. We have reviewed your arguments and conclude that you have not adequately explained how release of the information you have marked would interfere with the detection, investigation, or prosecution of crime. Thus, you may not withhold the remaining information under section 552.108. Except for the information discussed below, you must release the submitted information. We have marked the information that you must release.

The submitted information contains confidential information that the department must withhold. Section 552.130 excepts information that relates to a motor vehicle title or registration issued by an agency of this state. You must withhold the license plate numbers under section 552.130.

Section 552.101 encompasses information protected by other statutes. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). We have marked the CHRI that you must withhold from the requestor.

Lastly, the submitted documents contain confidential medical records. The Texas Medical Practice Act (the "MPA"), Title 3, Subtitle B of the Occupations Code, provides in section 159.002(b):

A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided in this chapter.

We have marked the documents that are medical records subject to the MPA. These documents may be released only in accordance with the MPA. Open Records Decision No. 598 (1991). *See* Occ. Code §§ 159.002(c), .004, .005.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

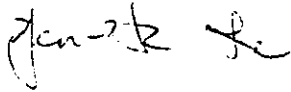
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Yen-Ha Le', written in a cursive style.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/ljp

Ref.: ID# 130896

Encl: Marked documents

cc: Ms. Denise Manis
White Hamilton, P.C.
118 East Rusk
Rockwall, Texas 75087
(w/o enclosures)